

United States
Circuit Court of Appeals
For the Ninth Circuit.

THE STEAMER "SAMSON," and BARGE NO. 8,
BARGE NO. 9, and BARGE NO. 27.

COLUMBIA CONTRACT COMPANY, a Corpora-
tion,
Claimant and Appellant.

SHAVER TRANSPORTATION COMPANY, a
Corporation,
Libellant and Appellee.

STANDARD OIL COMPANY OF CALIFORNIA,
a Corporation,
Respondent in Personam.

Upon Appeal from the United States District Court
for the District of Oregon.

Additions to Apostles.

[Filed and Printed Pursuant to Order Entered May 28, 1914.]

[**Motion to File Additions to Apostles, and Consent to Allowance of Motion, etc.**]

In the United States Circuit Court of Appeals for the Ninth Circuit.

The Steamer "SAMSON," BARGE NO. 8, BARGE NO. 9, and BARGE NO. 27,

Appellants,

vs.

SHAVER TRANSPORTATION COMPANY,

Libelant and Appellee.

STANDARD OIL COMPANY, Incorporated Under the Laws of the State of California, a Corporation,

Respondent *in Personam* and Appellee.

The Standard Oil Company, incorporated under the laws of the State of California, and one of the appellees herein, gives the Court to know and be informed that the record transmitted to this Court is imperfect and incomplete in that certain papers noted below and certain proceedings had below have not been certified.

WHEREFORE, the appellee moves the Court for leave to produce and file at the hearing of this cause the following papers filed in proceedings had, namely:

1. The motion of the appellee to take the supplemental libel filed by the libelant from the files and to dismiss the cause as to said Standard Oil Company.

2. Order of the Court passed July 15, 1912, overruling said motion, together with the opinion of the Court by Bean, District Judge, filed thereon.

3. The exceptions taken by this appellee to the supplemental libel filed by the libelant.

4. The order of the Court of April 12, 1912, overruling the said exceptions.

ZERA SNOW and

WALLACE McCAMANT,

Attorneys for Appellee.

To the Shaver Transportation Company, Appellee, and to its Proctors, Messrs. Wood, Montague & Hunt, and to the Appellant, The Columbia Contract Company, and its Proctors, Teal, Winfree & Minor:

You will take notice that the foregoing motion will be filed and on the day this cause is called for hearing we will apply to the Court for the allowance of the same and for an order permitting the appellee, the Standard Oil Company, incorporated under the laws of the State of California, to file in the cause as a part of the apostles on appeal the papers and orders referred to in the foregoing motion.

SNOW & McCAMANT and

GEO. B. GUTHRIE,

Attorneys for Appellee, Standard Oil Company,
Incorporated Under the Laws of the State of
California.

Due service of this motion is admitted and it is consented that the motion may be allowed and the

matter referred to may be certified and filed as a part of the transcript.

C. E. S. WOOD,
ERSKINE WOOD,
Proctors for Shaver Tr. Co.
TEAL, MINOR & WINFREE,
Proctors for Columbia Contract Co.

[Endorsed]: No. 2393. In the United States Circuit Court of Appeals for the Ninth Circuit. The Steamer "Samson," Barge No. 8, Barge No. 9 and Barge No. 27, Appellants, vs. Shaver Transportation Co., Libellant and Appellee. Standard Oil Co., Respondent *in Personam* and Appellee. Motion to File Additions to Apostles and Consent to Allowance of Motion, etc. Filed May 23, 1914. F. D. Monckton, Clerk.

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY—No. 5420.

SHAVER TRANSPORTATION COMPANY, a
Corporation,

Libellant,

vs.

Steamer "SAMSON," BARGE NO. 8, BARGE
NO. 9, and BARGE NO. 27.

COLUMBIA CONTRACT COMPANY, a Corporation,

Claimant,

vs.

STANDARD OIL COMPANY, Incorporated Under the Laws of the State of California, a Corporation,

Respondent.

Motion of Respondent to Take Supplemental Libel from the Files and Dismiss.

Standard Oil Company, incorporated under the laws of the State of California, a corporation, by its proctors, Snow & McCamant, enters its appearance to the supplemental libel filed by the libellant herein *in personam* against this respondent, and now moves the Court for the following orders:

For an order vacating any order which may have been entered herein granting leave to file the supplemental libel herein, and for an order setting aside the same and striking the same from the files, and for an order dismissing the supplemental libel as to this respondent, on the following grounds:

I.

The libellant has not stated such grounds in its supplemental libel, or in application to file the same, as entitles the libellant to file the supplemental libel herein; nor are the facts stated in the supplemental libel such as that the same constitute matters of supplemental libel herein; nor are the facts stated in the supplemental libel such as that any relief can be granted against this respondent.

II.

Libellant by its original libel herein filed against the steamer "Samson," Barge No. 8, Barge No. 9 and Barge No. 27, hath made and presented a case *in rem* against the said "Samson" and her barges, and by the supplemental libel filed herein the libellant has undertaken to proceed against this respondent *in personam*, and the two proceedings cannot be properly joined.

ZERA SNOW and
WALLACE McCAMANT,
GEO. B. GUTHRIE,

Proctors for the Respondent.

**[Order Overruling Motion to Take Supplemental
Libel from the Files, and Allowing Respondent
Twenty Days to Further Plead.]**

*In the District Court of the United States for the
District of Oregon.*

No. 5420.

July 15, 1912.

Steamer "SAMSON"

vs.

SHAVER TRANSPORTATION CO.
COLUMBIA CONTRACT COMPANY,
Claimant.

STANDARD OIL COMPANY,
Respondent.

This cause heretofore submitted upon motion of the respondent, Standard Oil Company, to take supplemental libel from the files, came on regularly at

this time for the decision and ruling of the Court; whereupon, after due consideration, it is ORDERED that said motion to take supplemental libel from the files be and the same hereby is overruled, and it is further ordered that the respondent herein be and hereby is allowed 20 days to further plead.

**[Opinion on Motion to Take Supplemental Libel
from the Files, etc.]**

*In the District Court of the United States for the
District of Oregon.*

IN ADMIRALTY.

“THE SAMSON.”

THE SHAVER TRANSPORTATION CO.,

Libelant.

COLUMBIA CONTRACT CO.,

Claimant.

STANDARD OIL CO.,

Respondent.

WOOD, MONTAGUE & HUNT, of Portland,
Oregon, for Libelants.

SNOW & McCAMANT, of Portland, Oregon,
for Respondent.

R. S. BEAN, District Judge:

In July, 1911, the steamer “Henderson,” while towing Oil Barge No. 93, belonging to the Standard Oil Company, was wrecked in a collision on the Columbia River with the steamer “Samson,” having in tow three barges belonging to the Columbia Contract Company. The owner of the “Henderson”

libeled the "Samson" and her barges *in rem* to recover damages for the collision, and subsequently filed a supplemental libel *in personam* against the Standard Oil Company, the owner of Barge 93, on the ground that such barge was also at fault. The latter company moves to take the supplemental libel from the files on the ground that it cannot properly be sued jointly with the "Samson."

Passing the technical question whether the Oil Company should be made a party, if at all, by an amended or supplemental libel, the real question for decision is whether, in case of a joint liability of two or more vessels for a collision, a joint action can be maintained against one *in rem* and against the owner of the other *in personam*. There is but little direct authority on the point.

Admiralty Rules Nos. 12 to 20, inclusive, regulate the practice in specific instances but not in a case like the one under consideration. In cases not so provided the Court is authorized by Rule 46 to regulate the practice in such a manner as it may deem most expedient for the due administration of justice; hence an action on a contract of affreightment may be brought against a vessel *in rem* and the owner *in personam*. (The Director, 26 Fed. 708.) So also an action for tort may be maintained against an offending vessel *in rem* and against a joint tort seizure *in personam*. (The Clan Graham, 153 Fed. 977.) The reasoning upon which these decisions are based support the right of joinder in the case now in hand. There is no such incompatibility between proceedings *in rem* against one vessel and *in personam*

against the owners of another when both are jointly liable for the collision as will prevent their joinder. On the other hand, it is calculated to advance the ends of substantial justice. A suit to recover damages for a collision cannot, under Rule 15, properly be brought against a vessel *in rem* and her owner *in personam*. (The Corsair, 145 U. S. 335.) But this rule has no reference to an action against one vessel *in rem* and the owner of another *in personam*. Judge Longear, in "Young America," Fed. Cases 18,178, was of the opinion that a joint action in such a case could not be maintained, but in view of Rule 46, as interpreted by this Court, the liberality of the admiralty procedure, its purpose to avoid a multiplicity of suits and to determine the entire controversy in one proceeding where it can be done without injury to the rights of either party, I am constrained to believe that the better doctrine is that stated by that eminent admiralty lawyer, Judge Brown of the Southern District of New York, in Joice vs. Canal Boats, 32 Fed. 553:

"When two vessels are in fault in causing damage to the libelant by collision, the 15th rule, I am satisfied does not prohibit the filing of a libel against the one vessel *in rem* and against the owner of the other vessel *in personam*, although in the case of The Hudson, 15 Fed. 172, this was supposed to be its effect. The case is not provided for in the Supreme Court rules except under the 59th rule, and the general scope and purpose of that rule evidently requires that such joinder should be allowed where the second

vessel cannot be reached by process; or where, as in this case the liability of others is *in personam* only.”

The question is one of procedure and should be determined by considerations of economy, fitness and convenience, and every argument drawn from this source is in favor of the joinder.

The motion will therefore be overruled and the Oil Company allowed twenty days in which to plead further.

In the District Court of the United States for the District of Oregon.

IN ADMIRALTY—No. 5420.

SHAVER TRANSPORTATION COMPANY, a
Corporation,

Libelant,

vs.

Steamer “SAMSON,” BARGE NO. 8, BARGE NO:
9, and BARGE NO. 27,

Defendants.

COLUMBIA CONTRACT COMPANY, a Corpora-
tion,

Claimant.

STANDARD OIL COMPANY, Incorporated Un-
der the Laws of the State of California, a Cor-
poration,

Respondent.

**Respondent's Exceptions to Libelant's Supple-
mental Libel.**

To the Honorable the Judges of the Above-entitled
Court:

The exceptions of Standard Oil Company, incor-

porated under the laws of the State of California, a corporation, respondent herein, to the "Supplemental Libel" of Shaver Transportation Company, libelant, allege insufficiency in the said libel as follows:

I.

That the said "Supplemental Libel" and the whole thereof is uncertain and insufficient in that it does not charge this respondent with the violation of any duty owed to the libelant by this respondent, but, on the contrary, expressly asserts negligence in navigation on the part of the steamer "Samson" and her barges, as also does it assert due care and proper navigation on the part of the steamer "Henderson" and Barge No. 93, and the said libel wholly fails to state facts sufficient to constitute a cause of suit against this respondent.

II.

That the said "Supplemental Libel" and the whole thereof is manifestly indirect, inconsistent, and insufficient, for the reason that this respondent is liable to the libelant, if at all, under a breach of its contract of charter with the owners of the "Henderson," as manifestly appears from the said libel itself, and this respondent was not, and cannot be, as to the libelant, a joint tort-feasor with the "Samson" on account of the negligence asserted in either the "Amended Libel" of the libelant or the answer of the claimant, and that thereby two separate causes of action are improperly joined herein; as also is it improper under the Rules and Practices in Admiralty by process *in personam* to join this

respondent in the same suit with a proceeding *in rem* brought against the steamer "Samson" and her barges.

III.

That the said "Supplemental Libel" and the whole thereof is uncertain, indirect, evasive, and insufficient in that, as manifestly appears by Article VII thereof, libelant's asserted claim against this respondent is wholly hypothetical, based upon the condition that libelant's averments in its "Amended Libel" are false and untrue, whereas libelant is bound to know the truth of its articles in this cause propounded under oath.

WHEREFORE, your respondent prays that an order may be passed dismissing the "Supplemental Libel" filed against it, and that respondent may recover its costs in this cause incurred.

SNOW & McCAMANT and
GEO. B. GUTHRIE,

Proctors for Standard Oil Company, Incorporated
Under the Laws of the State of California.

**[Order Denying Exceptions to Supplemental Libel,
and Granting Respondent Fifteen Days to
Answer.]**

*In the District Court of the United States for the
District of Oregon.*

No. 5420.

August 12, 1912.

Steamer "SAMSON," BARGES 8, 9, and 27.

COLUMBIA CONTRACT CO.,

Claimant.

SHAVER TRANSPORTATION CO.,

Libelant.

This cause heretofore submitted upon exceptions to supplemental libel came on regularly at this time for the decision and ruling of the Court; whereupon, after due consideration, it is ORDERED that said exceptions to supplemental libel herein be and the same are hereby denied and respondent granted 15 days to answer herein.

**[Certificate of Clerk U. S. District Court to Copy of
Motion to Take Supplemental Libel from Files,
etc., and that Respondent in Personam An-
swered.]**

United States of America,
District of Oregon,—ss.

I, A. M. Cannon, Clerk of the United States District Court for the District of Oregon, do hereby certify that the annexed copies of motion to take supplemental libel from the files and dismiss, order

of the Court overruling the motion, opinion of the Court thereon, exceptions of respondent to libellant's supplemental libel, and order of the Court overruling exceptions are full, true and correct copies of the originals thereof as the same appear of record and on file at my office and in my official custody.

I further certify that after the overruling of the exceptions respondent *in personam* answered as hereinbefore in the certificate to the apostles on appeal certified.

IN TESTIMONY WHEREOF I have hereunto set my hand and affixed the seal of said court at Portland, in said District, this May 19, 1914.

[Seal]

A. M. CANNON,
Clerk.

[Endorsed]: No. 2393. United States Circuit Court of Appeals for the Ninth Circuit. Filed May 23, 1914. F. D. Monckton, Clerk.

At a stated term, to wit, the October Term, A. D. 1913, of the United States Circuit Court of Appeals for the Ninth Circuit, held in the courtroom thereof, in the City and County of San Francisco, in the State of California, on Thursday the twenty-eighth day of May, in the year of our Lord one thousand nine hundred and fourteen. Present: The Honorable WILLIAM B. GILBERT, Circuit Judge, Presiding; Honorable ERSKINE M. ROSS, Circuit Judge; Honorable WILLIAM W. MORROW, Circuit Judge.

No. 2393.

The Steamer "SAMSON," and BARGE NO. 8,
BARGE NO. 9, and BARGE NO. 27.

COLUMBIA CONTRACT COMPANY, a Corpora-
tion,

Claimant and Appellant.

SHAVER TRANSPORTATION COMPANY, a
Corporation,

Libellant and Appellee.

STANDARD OIL COMPANY OF CALIFORNIA,
a Corporation,

Respondent *in Personam*.

**Order of Submission of Appeal and Allowing Filing
of Additions to Apostles.**

ORDERED, appeal in the above-entitled cause argued by Mr. Wirt Minor, counsel for the appellant, Mr. Erskine Wood, counsel for the appellee, and Mr. Ira A. Campbell, counsel for the respondent Standard Oil Company of California, and submitted to the Court for consideration and decision, with leave to the Respondent Standard Oil Company of California to file and print certain additions to the Apostles and to add a printed copy of such additions to each of the printed copies of the apostles on file herein.